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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re PATRICK S., a Person  
Coming Under the Juvenile  
Court Law.

B291129  
(Los Angeles County  
Super. Ct. No. 18CCJP02495)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

LEVI S.,

Defendant and Appellant.

APPEAL from an Order of the Superior Court of Los Angeles County. Stephen C. Marpet, Commissioner. Affirmed as modified.

John L. Dodd, under appointment by the Court of Appeal for Appellant.

Mary C. Wickam, County Counsel, Kristine P. Miles Acting Assistant County Counsel, Kimberly Roura, Deputy County Counsel for Respondent.

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Appellant Levi S. appeals the dependency court's jurisdictional and dispositional order finding Patrick S. within the jurisdiction of the dependency court under Welfare & Institutions Code section 300, subdivision (b)(1),<sup>1</sup> based on Father's alleged failure to properly administer Patrick's psychotropic medication. Department of Children and Family Services (DCFS) cross-appeals the dismissal of a jurisdictional allegation based upon Father's own mental health issues. We affirm the order as modified to reflect that Patrick was released to Father.

## **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

### *1. DCFS Referral*

Patrick, age 16, suffers from mental and emotional problems, including autism, schizophrenia, and visual and auditory hallucinations. Patrick has been receiving Regional Center services since 2008 for autism, but more recently, in October 2017, began to experience hallucinations. At the time of the petition herein, Patrick and Father were homeless and living at a Motel 6.

Since early March 2018, Patrick had been receiving Full Service Partnership (FSP) services. Services were initiated

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<sup>1</sup> All statutory references herein are to the Welfare & Institutions Code unless otherwise noted.

because Patrick reported seeing shadows that told him to harm himself. Patrick and Father had attended about 15-16 sessions. With medication, Patrick had made great progress and was no longer reporting hallucinations. However, the FSP therapist noted Father was difficult to work with and erratic. One time, Father called the therapist and told him Patrick was having a psychotic episode and “pulling out his fingernails.” When the therapist arrived about an hour later, Patrick was behaving normally and Father laughed off the situation, saying “the funniest thing happened, he calmed down the minute I got off the phone.”

The FSP therapist observed that Father displayed paranoid behavior and believed the world was out to get him. Father had taken Patrick to the emergency room hundreds of times over the last several months for various unfounded health issues. Father stated Patrick was suicidal, but Patrick did not exhibit any such behavior to the therapist. Father made other unfounded claims, including that Patrick had gained 300 pounds while on his medication.

The current case was commenced after DCFS received a referral from the child abuse hotline on April 13, 2018. The caller reported that Father was not administering Patrick’s psychotropic medication, which called for twice a day dosing. Patrick told the reporting party Father was only giving him the medicine once a day. Father denied this. Further, when Father was given Patrick’s next appointment, he became verbally aggressive and made alarming comments to the reporting party and staff. Father said “he [was] not sure if he [was] going to make it or if he is going to make ‘make it’ to the next day.” When

asked if he was suicidal, Father responded he was “feeling homicidal more than suicidal.”

As a follow up to the referral, the social worker went to Patrick and Father’s motel room. The room was clean, with two beds and small travel bags on the side of the beds. There were granola bars on a counter, and Gatorade and two bottles of flavored vodka in the bathroom.

The social worker interviewed Patrick alone. Patrick was appropriately dressed with clean clothing, and appeared well cared for and comfortable. Patrick stated he had not been to school for six months, but did not know why. He also said he and Father had moved out of their apartment because of mold and allergies.

Father confirmed Patrick had been receiving FSP services for several months. According to Father, they had moved into their new apartment in October 2017, but after it began to rain, a large hole formed in the ceiling. Father contended Patrick had developed his psychotic episodes because of mold in the apartment. Yet, Father showed the social worker an inspection report from the County Public Health Department that reported no “visible mold.” Father claimed the landlord had hidden the mold in the walls.

Father also believed Patrick’s medications were causing problems for him. Father asserted he was giving Patrick his medications as directed. Father confirmed Patrick had not attended school for the last six months, stating Patrick was “nonfunctional.” Father took Patrick to doctors almost every day. Father could not describe Patrick’s problems, and stated the doctors often turned them away.

The social worker then contacted the Psychiatric Mobile Response Team (PMRT), and told Father they would arrive in an hour. Father was highly agitated. Father stated he would allow the social worker to take Patrick. Father yelled to Patrick that he should go with the social worker. The PMRT did not find Father was a danger to himself or others.

On April 17, 2018, Father arrived at DCFS's offices with Patrick. Patrick was clean and well cared for. They met with the social worker, and Father showed them the County's inspection report, as well as stacks of hospital discharge papers and claimed the investigation had cost him a lot of money. Father was very upset and began to cry, and showed them Patrick's medications and stated the medication did not work for Patrick, and instead increased his hallucinations. Patrick was also on allergy medication and antibiotics. Father stated the school could not insure Patrick's safety, so he had not taken him to school.

The social workers told Father they intended to file a nondetention petition. The social worker spoke to Father's sister, Trisha, who was aware of Father's housing difficulties. Trisha stated Father's apartment became moldy after a water leak and Patrick had been going to the hospital several times a week for symptoms induced by exposure to the water leak. As a result Father was unable to take Patrick to school. Trisha believed Father took good care of Patrick's needs, Father was stressed but did not have any mental health issues.

DCFS's report concluded Father's untreated mental health issues had escalated and prevented him from providing a stable and safe environment for Patrick. Patrick had special needs, but was not receiving his medication, or attending school.

2. *Petition and Amended Petition; Detention.*

On April 19, 2018, DCFS filed a petition alleging one count under section 300, subdivision (b)(1), based upon Father's failure to administer Patrick's psychotropic medication.

DCFS's last-minute information for the detention hearing, held April 24, 2018, reported Father and Patrick stayed with Trisha over the weekend and there were no problems. Trisha was willing to permit them to stay in her home until they found suitable housing, and Trisha and her husband were willing to serve as a placement for Patrick if necessary. Trisha informed DCFS that if Patrick were removed from Father, Father and Patrick would have a meltdown. DCFS recommended Father immediately re-enroll Patrick in school, comply with recommended services, undergo random drug/alcohol testing, and requested the court order an Evidence Code Section 730 evaluation for Father.

At the hearing, the court found Father to be Patrick's presumed Father, and ordered Patrick released to Father. The court ordered multidisciplinary services, HUB medical services, and ordered that Father ensure Patrick attend school and follow up with Patrick's Regional Center Services. The court set the adjudication hearing for May 29, 2018.

On May 24, 2018, DCFS filed a first amended petition, adding allegations b-2 and b-3.<sup>2</sup> The petition alleged at b-2 that Father had undiagnosed mental health issues, had expressed suicidal and homicidal thoughts, and demonstrated depressive and disorganized thoughts. Father failed to comply with a

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<sup>2</sup> The allegations of Count b-3 were addressed to Mother. The court later struck them at the jurisdictional hearing.

recommendation for mental health issues, and Father's conduct endangered Patrick.

3. *Jurisdiction and Disposition Report.*

DCFS's jurisdictional report dated May 25, 2018 stated DCFS had spoken to Patrick's mother, who said she was "not allowed to talk to [Patrick] on the telephone because of whatever [Father] might be going through." She reported Father had a lot of physical health issues that might be affecting him mentally. She and Father did not get along, but she believed what Father told her about Patrick. Patrick lived with Father because Mother could not dedicate her full time to him. She believed Patrick's autism was the result of vaccinations. Mother had suffered four nervous breakdowns, and had been diagnosed with anxiety.

Father told DCFS that six months earlier, Patrick began to have auditory hallucinations. Patrick came home one day and told Father someone was filming them from across the street. Patrick had been placed on five different holds, and from January 31 to February 7, Patrick was hospitalized for mental health issues.

Patrick did not participate in an interview with the social worker, and would only state "I'm nonverbal" and would laugh and smile during the meeting unprompted. Patrick denied Father failed to give his medications to him.

Patrick's FSP therapist told the social worker Patrick was adamant Father was only giving him his medicine once a day, at night. When confronted, Father became upset and told the therapist not to take Patrick's word. The therapist had trouble getting information from Father at the time the FSP therapy was started in early March. Father was agitated and hostile, and stated "I am not doing this." After intake, for the next month

they managed the family's housing emergencies. Almost on a weekly basis the therapist was linking the family with hotels and other assistance. The therapist had been unable to set clinical goals for Patrick because Father would not comply. He was not able to meet with Patrick alone for an entire session, and Father's own needs conflicted with the therapist's ability to set goals for Patrick. Two or three times a week, Father would call the therapist and vent his frustration, saying "no one wants to help me. Don't be surprised if you see me on TV. I guess I'm going to have to do something crazy."

DCFS summarized: "the matter is difficult to prove and [DCFS] cannot say with certainty whether or not the father gave the child his medication as described. . . . The child Patrick was very clear and consistently stated that father only gave him his medication at night."

DCFS provided last-minute information for the June 13, 2018 adjudication hearing. The family was now receiving Wraparound services,<sup>3</sup> although Father displayed concerns about homelessness and the ineffectiveness of Patrick's medications.

Father had stated he could take care of Patrick on his own. Father believed Patrick was on too much medication and would go back to normal if he stopped taking the medication. Patrick's therapist recognized Father "had his own issues he was working with," and such issues were a barrier to Patrick's care. "The

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<sup>3</sup> "Wraparound" services refer to services provided for children at risk of a group home placement or who have special medical, mental health, or scholastic needs. DCFS contracts with a variety of wrap agencies to provide extra support for such children. (<http://dcfs.co.la.ca.us/katieA/wraparound/index.html>.)



more his social and environmental stressors [crept up], the more unraveled he would become.”

4. *Jurisdictional and Dispositional Hearing.*

At the June 13, 2018 hearing, Father testified he and Patrick were living with Trisha, where Patrick had his own room. Patrick was attending school at Taft Senior High School, and passed the 11th grade. For the last month, Patrick had been receiving Wraparound services, and was currently taking Zyprexa twice a day. The medication had been prescribed in late January 2018, after Patrick had tried several other medications. Father had difficulty with Patrick’s therapist and psychiatrist, asserting “they would take notes at every visit and I wasn’t allowed to have an opinion.”

Father denied taking Patrick off his medication. Father denied expressing suicidal or homicidal thoughts, and denied taking any psychotropic medication. Father claimed he only kept Patrick out of school for 70 days, and he had taken Patrick to the hospital 100 times since November 2017. Father intended to administer Patrick’s medication as prescribed.

The court found Father did not have any undiagnosed mental health issues. Rather, Father was stressed regarding the care and custody of Patrick. The court stated Father was not neglectful. “He’s had difficulty, as the court mentioned, that has been exacerbated by other factors. [¶ . . . ¶] You can see the stress level with Father got to the point where he’s making these outrageous statements.”

The trial court sustained count b-1 as amended and dismissed count b-2. The court refused to order alcohol testing. With respect to an Evidence Code section 730 exam, the court found “[t]here’s a lot of issues going on and I think I need the 730

evaluation. Father may not want it but I need it to make sure that we're providing this family with all of the available services." After the conclusion of the 730 evaluation, the court would reassess and reevaluate whether any additional orders should be made to assist Father in maintaining custody of Patrick. The court set September 12, 2018 for a progress report and December 12 for a six-month review.

### **DISCUSSION**

Father argues the dependency court erred in failing to dismiss the petition against him because DCFS failed to establish he was not giving Patrick his medicine. Father admits the allegations of the petition may have been true at the time of its filing, but contends by the time of the jurisdictional hearing, they were living with Trisha and doing well.

Section 300, subdivision (b)(1), under which the petition here was brought, authorizes a juvenile court to exercise dependency jurisdiction over a child in relevant part if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child. . . ." A minor comes within this statutory definition if there is (1) neglectful conduct by the parent in one of the specified forms, (2) causation, and (3) serious harm or illness to the minor, or substantial risk of such harm or illness. (*In re R.T.* (2017) 3 Cal.5th 622, 628.) *In re R.T.* made clear section 300, subdivision (b)(1) does not require neglectful conduct, but merely a "failure or inability" to adequately supervise or protect the child. (*Id.* at p. 629.)

Under substantial evidence review, we resolve all conflicts in the evidence in favor of and indulge all reasonable inferences to support the dependency court's findings. (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 194–195, disapproved on another ground in *In re I.J.* (2013) 56 Cal.4th 766, 780-781.) We do not assess witness credibility. (*Ibid.*)

**A. The Jurisdictional Finding of Continuing Risk to Patrick Under Count b-1 is Supported by Substantial Evidence.**

In arguing that substantial evidence does not support jurisdiction under Count b-1, Father points to the fact that the social worker admitted it “was difficult to prove” whether Father failed to provide Patrick’s medication, and in any event, the family’s situation had improved when they moved in with Trisha and had a stable living arrangement: Patrick was attending school and Father asserted he was properly administering Patrick’s medication.

Here, substantial evidence supports the dependency court’s conclusion. Father’s failure to provide a minor with necessary medication is grounds for section 300 jurisdiction. Even if Father’s conduct in failing to give Patrick his medication and irrational beliefs about mold and the effects of Patrick’s medication had abated after they moved in with Trisha, continuing jurisdiction was necessary given the temporary nature of the living arrangement with Trisha. Furthermore, WRAP services had just begun, and FSP had not completed a full evaluation of the family’s situation or completed goals. Finally, as indicated by the dependency court’s order of an Evidence Code section 730 evaluation, even with improved conditions, additional treatment, therapy, and support for the family was needed.

**B. The Dependency Court's Dismissal of Count b-2 is supported by Substantial Evidence.**

DCFS cross-appeals the dismissal of Count b-2, which was based on Father's mental health. DCFS alleges Father repeatedly exhibited paranoid, volatile, and hostile behaviors that DCFS asserts was caused by more than stress: for example, Father took Patrick to doctors, by his own admission, over 100 times and he believed Patrick's condition was caused by mold.

We disagree. We conclude the dependency court's finding that stress, not mental health problems, was at the foundation of Father's behavior here, is supported by substantial evidence. The court observed Father's issues were triggered by the stress of homelessness and Patrick's condition, and Father did not have any undiagnosed mental health issues. Father was not taking any psychotropic medication. Instead, since Father and Patrick moved in with Trisha, the family's situation had stabilized; Father maintained he was giving Patrick his medication as directed and Patrick was attending school. This improved behavior is evidence that in fact Father's conduct was based on his inability to cope with circumstances and was not caused by mental health issues.

As the dismissal of Count b-2 was without prejudice to refile if necessary due to new or changed circumstances, we defer to the dependency court's order of an Evidence Code section 730 evaluation of the family. Depending on the outcome of that evaluation, DCFS may choose to refile the allegation in Count b-2 based upon any new information regarding Father's mental health that would justify the filing of a petition under section 300.

**C. Correction of Minute Order.**

Father requests we correct the minute order of the hearing held June 13, 2018 to reflect Patrick was not detained and was released to Father's care. Our review of the record verifies the oral proceedings reflect Patrick was not removed from either parent. DCFS concurs the order is inconsistent with the oral proceedings to extent it states on page three "[t]he Court orders the child removed from home and the care, custody and control of the parent(s)/legal guardian(s) from whom the child is being removed and placed in the care, custody and control of the Department of Children and Family Services."

Given the record indicates Patrick at all times resided with Father and was not removed from either parent, we order the minute order corrected to strike the above language. (*People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346 ["If the clerk's and reporter's transcripts cannot be reconciled, the part of the record that will prevail is the one that should be given greater credence under the circumstances of the case"]; *In re D.H.* (2016) 4 Cal.App.5th 722, 725.)

**DISPOSITION**

The order of the dependency court is affirmed as modified.

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CURREY, J.

We concur:

WILLHITE Acting, P.J.

COLLINS, J.